BOMBAY LOTTERIES AND PRIZE COMPETITIONS CONTROL AND TAX ACT, 1948.

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BOMBAY ACT No. LIV OF 1948.[1]

[THE BOMBAY LOTTERIES AND PRIZE COMPETITIONS CONTROL AND TAX ACT, 1948.]

[*15th November 1948.*]

An Act to control and to tax lotteries and prize competitions in the Province of Bombay.

WHEREAS it is expedient to control and to levy a tax on lotteries and prize competiitions in the Province of Bombay; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint in this behalf.

Definitions.

2. (*1*) In this Act, unless there is anything repugnant in the subject or context—

(*a*) "coupon" includes, in relation to a prize competition, any document in which the solution to the competition is submitted by any person;

(*b*) "money" includes a cheque or any other negotiable instrument, a postal order or a money order;

(*c*) "newspaper" includes any journal, magazine or other periodical publication;

(*d*) "prize competition" includes—

(*i*) cross-word prize competition, missing words prize competition, picture prize competition, number prize competition, or any other competition for which the solution is prepared beforehand by the promoters of the competition or for which the solution is determined by lot;

(*ii*) any competition in which prizes are offered for forecasts of the results either of a future event or of a past event the result of which is not yet ascertained ornot yet generally known; and

(*iii*) any other competition success in which does not depend to a substantial degree upon the exercise of skill,

but does not include a prize competition contained in a newspaper printed and published outside the Province of Bombay;

(*e*) "Province" means the Province of Bombay;

(*f*) "quarter" means a period of three months beginning from the 1st January to 31st March, from 1st April to 30th June, from 1st July to 30th September and from 1st October to 31st December in each year;

(*g*) "ticket" includes, in relation to any lottery or proposed lottery, any document evidencing the claim of a person to participate in the chances of the lottery.

(*2*) For the purposes of this Act—

(*a*) references to printing shall be construed as including references to writing and other modes of representing or reproducing words in a visible form; and

(*b*) documents or other matters shall be deemed to be distributed if they are distributed to persons or places whether within or without the Province and the expression "distribution" shall be construed accordingly.

[1]For Statement of Objects and Reasons, *see Bombay Government Gazette*, 1948, Part V, page 245.

All lotteries unlawful.

3. Subject to the provisions of this Act, all lotteries are unlawful.

Offences in connection with lotteries

4. (*1*) Subject to the provisions of this section every person who in connection with any lottery promoted or proposed to be promoted either in this Province or elsewhere—

(*a*) publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, or any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in the lottery ; or

(*b*) prints any tickets for use in the lottery ; or

(*c*) sells or distributes, or offers or advertises for sale or distribution, or has in his possession for the purpose of sale or distribution, any tickets or chances in the lottery ; or

(*d*) prints, publishes or distributes, or has in his possession for the purpose of publication or distribution—

(*i*) any advertisement of the lottery, or

(*ii*) any list (whether complete or not) of prize winners or winning tickets in the lottery, or

(*iii*) any such matter descriptive of the drawing or intended drawing of the lottery, or otherwise relating to the lottery, as is calculated to act as an inducement to persons to participate in that lottery or in other lotteries ; or

(*e*) brings, or invites any person to send into the Province for the purpose of sale or distribution any ticket in, or advertisement of, the lottery ; or

(*f*) sends or attempts to send out of the Province any money or valuable thing received in respect of the sale or distribution, or any document recording the sale or distribution, or the identity of the holder, of any ticket or chance in the lottery ; or.

(*g*) uses any premises, or permits any premises to be used, for purposes connected with the promotion or conduct of the lottery : or

(*h*) causes or attempts to cause any person to do any of the abovementioned acts shall on conviction, be punishable,—

(*i*) for the first offence with fine which may extend to one thousand rupees;

(*ii*) for the second offence with fine which may extend to two thousand rupees ; and

(*iii*) for any subsequent offence with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both.

(*2*) In any proceedings instituted under sub-section (1), an accused person shall not be deemed to be guilty if he proves that the lottery to which the proceedings relate was such a lottery as is not deemed to be an unlawful lottery or prize competition under section 5, 6 or 7, as the case may be, and that at the date of the alleged offence the accused believed and had reasonable ground for believing that none of the conditions required by section 5 or 6 to be observed in connection with the promotion and conduct of the lottery had been broken.

Licensed entertainment lotteries not unlawful.

5. (*1*) A lottery promoted as an incident of an entertainment shall be deemed to be an unlawful lottery, unless the promoter thereof has obtained a licence in respect of such lottery.

(*2*) The following conditions shall be observed by the promoter in connection with the promotion and conduct of such lottery, namely :—

(*a*) the whole proceeds of the entertainment (including the proceeds of the lottery) after deducting—

(*i*) the expenses of the entertainment, excluding expenses incurred in connection with the lottery;

(*ii*) the expenses incurred in printing tickets in the lottery; and

(*iii*) such sum (if any) not exceeding one hundred rupees, which the promoters of the lottery think fit to appropriate on account of any expense incurred by them in purchasing prizes in the lottery,

shall be devoted to purposes other than private gain;

(*b*) none of the prizes in the lottery shall be money prizes;

(*c*) tickets or chances in the lottery shall not be sold or issued, nor shall the result of the lottery be declared, except on the premises on which the entertainment takes place and during the progress of the entertainment; and

(*d*) the facilities afforded for participating in lotteries shall not be the only, or the only substantial, inducement to persons to attend the entertainment.

(*3*) If any of the conditions specified in sub-section (*2*) is broken, every person concerned in the promotion or conduct of the lottery shall, on conviction, be punishable—

(*a*) for the first offence with fine which may extend to one thousand rupees;

(*b*) for the second offence with fine which may extend to two thousand rupees; and

(*c*) for any subsequent offence with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both :

Provided that in any proceeding under this section, it shall be a defence to prove that the breach was committed without his knowledge.

Explanation.—The entertainments to which this section applies are bazaars, sales of work, fetes and other entertainments of a similar character, whether limited to one day or extending over two or more days.

Licensed private lotteries not unlawful.

6. (*1*) A private lottery shall be deemed to be an unlawful lottery unless the promoter thereof has obtained a licence in respect of such lottery.

(*2*) The following conditions shall be observed by the promoter in connection with the promotion and conduct of such lottery, namely :—

(*a*) the whole proceeds, after deducting only expenses incurred for printing and stationery, shall be devoted to the provision of prizes for purchasers of tickets or chances, or, in the case of a lottery promoted for the members of a society, shall be devoted either to the provision of prizes as aforesaid or to purposes which are purposes of the society or, as to part, to the provision of prizes as aforesaid and, as to the remainder, to such purposes as aforesaid;

(*b*) there shall not be exhibited, published or distributed any written notice or advertisement of the lottery other than—

(*i*) a notice thereof exhibited on the premises of the society for whose members it is promoted or, as the case may be, on the premises on which the persons for whom it is promoted work or reside ; and

(*ii*) such announcement or advertisement thereof as is contained in the tickets, if any ;

(*c*) the price of every ticket or chance shall be the same and the price of any ticket shall be stated on the ticket ;

(*d*) every ticket shall bear upon the face of it the names and addres of each of the promoters and a statement of the persons to whom the sale of tickets or chances by the promoters in restricted, and a statement that no prize won in the lottery shall be paid or delivered by the promoters to any person other than the person to whom the winning ticket or chance was sold by them, and no prize shall be paid or delivered except in accordance with that statement ;

(*e*) no ticket or chance shall be issued or allotted by the promoters except by way of sale and upon receipt of the full price thereof, and no money or valuable thing so received by a promoter shall in any circumstances be returned ; and

(*f*) no tickets in the lottery shall be sent through the post.

(*3*) If any of the conditions specified in sub-section (*2*) is broken, each of the promoters of the lottery, and where the person by whom the condition is broken is not one of the promoters, that person also, shall, on conviction, be punishable—

(*a*) for the first offence with fine which may extend to one thousand rupees ;

(*b*) for the second offence with fine which may extend to two thousand rupees ; and

(*c*) for any subsequent offence with imprisonment for a term may extend to three months or with fine which may extend to five thousand rupees or with both :

Provided that in any proceeding under this section, it shall be a defence for a person charged only by reason of his being a promoter of the lottery to prove that the offence was committed without his knowledge.

Explanation.—For the purposes of this section—

(*a*) the expression " private lottery " means a lottery in the Province which is promoted for, and in which the sale of tickets or chances by the promoters is confirmed to, either—

(*i*) members of one society established and conducted for purposes not connected with gaming, wagering or lotteries ; or

(*ii*) persons all of whom work on the same premises ; or

(*iii*) persons all of whom reside on the same premises, and which is promoted by persons each of whom is a person to whom under the foregoing provisions tickets or chances may be sold by the promoters and, in the case of a lottery promoted for the members of a society, is a person authorised in writing by the governing body of the society to promote the lottery ; and

(*b*) the expression " society " includes a club, institution, organisation or other association of persons by whatever name called, and each local or affiliated branch or section of a society shall be regarded as a separate and distinct society.

Licensed prize competitions not unlawful.

7. A prize competition shall be deemed to be an unlawful prize competition unless a licence in respect of such competition has been obtained by the promoter thereof :

Provided that a licence may be granted for more than one such competition conducted by the same person.

Penalty for contravention of section 7.

8. Without prejudice to his liability, if any, to be proceeded against under the preceding provisions of this Act relating to lotteries, whoever contravenes the provisions of section 7 shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both.

Licence

9. Every licence granted under this Act shall be granted by the Collector on payment of such fees and subject to such conditions and shall be in such form as may be prescribed.

Power of Provincial Government to issue orders pertaining to licences.

10. Notwithstanding anything contained in this Act or any rules made thereunder, it shall be lawful for the Provincial Government by general or special order to—

(*a*) prohibit the grant of licences in respect of a lottery or prize competition or class of lotteries or prize competitions throughout the Province or in any area ;

(*b*) prescribe the maximum number of licences which may be granted in any area ;

(*c*) direct that no licences specified in such order shall be granted without the previous approval of the Provincial Government ;

(*d*) issue such other instructions in any matter pertaining to the grant or otherwise of licences under the Act as the Provincial Government may deem proper.

Suspension or cancellation of licence.

11. The Collector may suspend or cancel a licence granted under this Act—

(*1*) if there is any breach of any of the conditions subject to which the licence is granted ; or

(*2*) if the holder of such licence contravenes any of the conditions specified in section 5 or 6 ; or

(*3*) if any tax payable under section 12 is not duly paid by the promoter ; or

(*4*) if the holder of such licence contravenes any of the provisions of section 15 ; or

(*5*) for any other reason, for which the suspension or cancellation of the licence is, in the opinion of the Provincial Government, necessary in the public interest.

Levy of tax on lotteries and prize competitions.

12. (*1*) There shall be levied—

(*a*) in respect of every lottery for which a licence has been obtained under section 5 or 6, a tax at the rate of 12½ per cent. of the total sum received or due in respect of such lottery ; and

(*b*) in respect of every prize competition for which a licence has been obtained under section 7, a tax at such rate not exceeding 25 per cent. of the total sum received in respect of such competiton as may be specified by the Provincial Government in a notification in the *Official Gazette*.

The tax shall be collected from the promoter of such lottery or prize competition, as the case may be.

(*2*) Notwithstanding anything contained in sub-section (*1*), the Provincial Government may, by notification in the *Official Gazette*, direct that the tax to be levied in respect of a lottery or prize competition shall be at such rate not exceeding 50 per cent. of the total sum received or due in respect of such lottery or prize competition as may be specified in the notification.

(*3*) The Collector may, after making such inquiry as he deems fit, determine the person who shall be deemed to be the promoter for the purpose of this section and the decision of the Collector in this behalf shall be final.

Calculation and recovery of tax levied under section 12.

13. (*1*) The amount of tax to be levied in respect of a lottery or prize competition under section 12 shall be calculated by the Collector on the total sum received or due in respect of the lottery or prize competition as disclosed in the accounts maintained and statements submitted to him under section 15.

(*2*) In cases where no such accounts are maintained or where no such statements are submitted or where such accounts or statements are in the opinion of the Collector false or incorrect the Collector shall make the calculation to the best of his judgment.

(*3*) The tax leviable under section 12 shall in the case of a prize competition be paid within 30 days of the end of each quarter and in the case of a lottery be paid within 30 days of the date on which such lottery is drawn.

(*4*) If any tax payable under section 12 is in arrear the Collector may, in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid or any smaller sum above the amount of the tax which the Collector may think it reasonable to recover.

Licence fee and other dues to be recoverable as arrears of land revenue.

14. All sums payable as fees or taxes under this Act shall be recoverable as arrears of land revenue.

Promoters of lotteries or prize competition to keep and maintain accounts.

15. Every person promoting a lottery or prize competition of any kind shall keep and maintain accounts relating to such lottery or competition and shall submit to the Collector statements in such form and at such period as may be prescribed.

Penalty for failure to keep accounts.

16. If any promoter of a lottery or prize competition liable under section 15 to keep accounts or to submit statements fails to keep the accounts or to submit the statements in the manner and at the period prescribed, he shall, on conviction, be punishable with fine which may extend to five hundred rupees.

Power of Collector to require production of accounts or to inspect accounts.

17. The Collector may, for the purposes of this Act, at all reasonable times—

(*i*) require any promoter of a lottery or prize competition to produce before him accounts or other documents or to furnish any other information ; or

(*ii*) inspect the accounts of any such promoter.

Power of entry and search.

18. It shall be lawful for a police officer—

(*i*) in Greater Bombay not below the rank a Sergant or Sub-Inspector and either empowered by general order in writing or authorised in each case by special warrant issued by the Commissioner of Police, Bombay, and

(*ii*) elsewhere not below the rank of a Sub-Inspector of Police authorised by a special warrant issued in each case by a Magistrate of the First Class or a District Superintendent of Police or by an Assistant or Deputy Superintendent of Police specially empowered by the Provincial Govenment in this behalf—

(*a*) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any house, room or place which he has reason to suspect is used for purposes connected with the promotion or conduct of any lottery or prize competition;

(*b*) to search all parts of the house, room or place which he shall have so entered, the persons whom he shall find therein and also such persons as may be specified by name in the warrant;

(*c*) to take into custody and bring before a Magistrate all such prsons;

(*d*) to seize all things which are reasonably suspected to have been used or intended to be used in connection with a lottery or prize competition and which are found therein:

Provided that no officer shall be authorised by special warrant unless the Commissioner of Police, the Magistrate, the District or Assistant or Deputy Superintendent of Police concerned is satisfied, upon any complaint made before him on oath and upon making such inquiry as he may think necessary, that there are reasonable ground to suspect the said house, room or place to be used for purposes connected with the promotion or conduct of an unlawful lottery or prize competition.

Searches how made.

19. All searches made under section 18 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898. V of 1898.

Power to arrest without warrant in certain cases.

20. A Police Officer may apprehend without warrant any person found, or reasonably suspected of, committing an offence under clause (*a*), (*c*) or (*d*) of sub-section (*1*) of section 4 in any public street, or thoroughfare or in any place to which the public have or are permitted to have access.

Power of investigation.

21. (*1*) Every Officer not below the rank of sub-inspector of police shall have power to investigate all offences punishable under this Act.

(*2*) Every such officer shall, in the conduct of such investigation, exercise the powers (except the power to arrest without warrant otherwise than under section 20) conferred by the Code of Criminal Procedure, 1898, upon an officer incharge of a police station for the investigation of a cognizable offence. V of 1898.

Offences to be bailable.

22. All offences punishable under this Act shall be bailable.

Jurisdiction to try offences.

23. No Magistrate, below the rank of a Presidency Magistrate or a Magistrate of the Second Class, shall try an offence under this Act.

Government may authorise certain officers to perform functions of Collector.

24. The Provincial Government may, by general or special order, authorise any officer to perform the functions to be performed by the Collector under any of the provisions of this Act.

Offences by corporations, etc.

25. Where a person committing an offence under this Act is a company or other body corporate or an association of persons (whether incorporated or not) every person who at the time of the commission of the offence was a director, manager, person concerned with the management thereof

shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

Collectors and other officers to act subject to orders of Provincial Government.

26. The Collectors and all officers duly authorised under section 24 shall exercise the powers and perform the duties conferred and imposed on them by or under this Act in accordance with such orders as the Provincial Government may from time to time make.

Officers to be public servants.

27. All officers acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Protection of persons acting in good faith and limitation of suits and prosecutions.

28. (*1*) No suit, prosecution or other legal proceeding shall be instituted against any officer of the Crown for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(*2*) No suit shall be instituted against the Province and no prosecution or suit shall be instituted against any officer of the Crown in respect of any thing done or intended to be done, under this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.

Appeal and revision.

29. (*1*) Any person aggrieved by any order passed under this Act by the Collector or any officer authorised under section 24 may appeal against such order to the Commissioner or to such officer as the Provincial Government may appoint in this behalf.

(*2*) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (*3*), be final and shall not be liable to be called in question in any court of law whether in a suit or other proceeding or by way of appeal or revision.

(*3*) The Provincial Government may, at any time, call for and examine the record of any order of, or the proceedings recorded by, any officer or person for the purpose of satisfying itself as to the legality or propriety of such order passed by, or as to the regularity of such proceedings of, such officer or person and may pass such order in reference thereto as it thinks fit.

Exemption.

30. The Provincial Government may exempt from all or any of the provisions of this Act any prize competition the net proceeds of which are to be devoted to a charitable purpose.

Rules.

31. (*1*) The Provincial Government may, by notification in the *Official Gazette* make rules for the purposes of carrying out the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision the Provincial Government may make rules for the following matters :—

(*i*) the form of licence and the fees on payment of which and the conditions subject to which a licence shall be granted under section 9 ;

(*ii*) the manner in which the accounts shall be kept and maintained and the form in which, the period at which, the statements of accounts are to be submitted under section 15.

(*3*) Any rule made under this section may provide that any person contravening any such rule shall, on conviction, be liable to fine which may extend to fifty rupees.

(*4*) Rules made under this section shall be subject to the condition of previous publication.

Saving.

32. Nothing in this Act shall apply to—

Bom. III of 1912.

(*a*) the owner, lessee or occupier of any race course to whom a licence has been granted for horse racing on a race course under section 4 of the Bombay Race Courses Licensing Act, 1912, or to any person who carries on the business or vocation of or acts as a book-maker or turf commission agent under a licence or permit issued by such owner, lessee or occupier to enable him to carry on his business or vocation under the said Act as specified in the licence or permit or to any entries in respect of any stake or bet received by such person;

(*b*) a state lottery within the meaning of entry 48 in List I in the Seventh Schedule to the Government of India Act, 1935;

26, Geo. 5 Ch. 2.

(*c*) a lottery specially authorised by the Provincial Government.

Repeal of section 294A of Act XLV of 1860.

XLV of 1860.

33. The provisions of section 294-A of the Indian Penal Code, in its application to the Province of Bombay, are hereby repealed.

Repeal.

Bom. XI of 1939.

34. The Bombay Prize Competition Tax Act, 1939, is hereby repealed:

Provided that all licences granted under the said Act and in force on the date on which this Act comes into force shall be deemed to be granted under this Act.